

May 9, 2000

99-02

Amendment of Rules 2.401,
2.403, 2.404, 2.405, 2.501,
2.502, 2.503, 3.216 and 5.143
of the Michigan Court Rules,
and adoption of new Rules
2.410 and 2.411

On order of the Court, notice of the proposed changes and an opportunity for comment in writing and at public hearings having been provided, and consideration having been given to the comments received, the following amendments of Rules 2.401, 2.403, 2.404, 2.405, 2.501, 2.502, 2.503, 3.216 and 5.143 of the Michigan Court Rules, and new Rules 2.410 and 2.411, are adopted, to be effective August 1, 2000.

[The rules are amended as set forth below. Changes from current language are shown in Rules 2.401, 2.403, 2.404, 2.405, 2.501, 2.502, 2.503, and 5.143. In Rule 3.216, only the revised text is shown. Rules 2.410 and 2.411 are new.]

Subchapter 2.400 Pretrial Procedure; ~~Mediation~~ Alternative
 Dispute Resolution; Offers of Judgment;
 Settlements

Rule 2.401 Pretrial Procedures; Conferences; Scheduling
 Orders

(A) Time; Discretion of Court. At any time after the commencement of the action, on its own initiative or the request of a party, the court may direct that the attorneys for the parties, alone or with the parties, appear for a conference. The court shall give reasonable notice of the scheduling of a conference. More than one conference may be held in an action.

(B) Early Scheduling Conference and Order.

(1) Early Scheduling Conference. The court may direct that an early scheduling conference be held. In addition to those considerations enumerated in subrule (C)(1), during this conference the court should consider:

- (a) ~~consider~~ whether jurisdiction and venue are proper or whether the case is frivolous,
- (b) whether to refer the case to an alternative dispute resolution procedure under MCR 2.410,
and
- ~~(b)~~(c) ~~determine~~ the complexity of a particular case and enter a scheduling order setting time limitations for the processing of the case and establishing dates when future actions should begin or be completed in the case.

(2) Scheduling Order.

- (a) At an early scheduling conference under subrule (B)(1), a pretrial conference under subrule (C), or at such other time as the court concludes that such an order would facilitate the progress of the case, the court shall establish times for events the court deems appropriate, including
 - (i) the initiation or completion of an ADR process,
 - (ii) the amendment of pleadings, adding of parties, or filing of motions,
 - ~~(i)~~(iii) the completion of discovery,
 - ~~(ii)~~(iv) the exchange of witness lists under subrule (I), and
 - ~~(iii)~~(v) ~~any other matters that the court may deem appropriate, including the amendment of pleadings, the adding of parties, the filing of motions, or the scheduling of mediation, a pretrial conference, a settlement conference, or trial.~~

More than one such order may be entered in a case.

(b) - (c) [Unchanged.]

(C) Pretrial Conference; Scope.

- (1) At a conference under this subrule, in addition to the matters listed in subrule (B)(1), the court and the attorneys for the parties may consider any matters that will facilitate the fair and expeditious disposition of the action, including:

(a) - (g) [Unchanged.]

(h) whether mediation, case evaluation, or some other form of alternative dispute resolution would be appropriate for the case, and what mechanisms are available to provide such services;

(i) - (l) [Unchanged.]

(2) [Unchanged.]

(D) - (I) [Unchanged.]

Rule 2.403 ~~Mediation~~ Case Evaluation

(A) Scope and Applicability of Rule.

(1) A court may submit to ~~mediation~~ case evaluation any civil action in which the relief sought is primarily money damages or division of property. ~~However, MCR 3.216 governs mediation of domestic relations actions.~~

(2) ~~Mediation~~ Case evaluation of tort cases filed in circuit court is mandatory beginning with actions filed after the effective dates of Chapters 49 and 49A of the Revised Judicature Act, as added by 1986 PA 178; however, the court may except an action from ~~mediation~~ case evaluation on motion for good cause shown if it finds that ~~mediation~~ case evaluation of that action would be inappropriate.

(3) Cases filed in district court may be submitted to ~~mediation~~ case evaluation under this rule. The time periods set forth in subrules (B)(1), (G)(1), (L)(1) and (L)(2) may be shortened at the discretion of the district judge to whom the case is assigned.

(B) Selection of Cases.

(1) The judge to whom an action is assigned or the chief judge may select it for ~~mediation~~ case evaluation by written order no earlier than 91 days after the filing of the answer

(a) on written stipulation by the parties,

(b) on written motion by a party, or

- (c) on the judge's own initiative.
- (2) Selection of an action for mediation case evaluation has no effect on the normal progress of the action toward trial.
- (C) Objections to Mediation Case Evaluation.
 - (1) To object to mediation case evaluation, a party must file a written motion to remove from mediation case evaluation and a notice of hearing of the motion and serve a copy on the attorneys of record and the mediation ADR clerk within 14 days after notice of the order assigning the action to mediation case evaluation. The motion must be set for hearing within 14 days after it is filed, unless the court orders otherwise.
 - (2) A timely motion must be heard before the case is submitted to mediation case evaluation.
- (D) Mediation Case Evaluation Panel.
 - (1) Mediation Case evaluation panels shall be composed of 3 persons.
 - (2) The procedure for selecting mediation case evaluation panels is as provided in MCR 2.404.
 - (3) A judge may be selected as a member of a mediation case evaluation panel, but may not preside at the trial of any action in which he or she served as a mediator case evaluator.
 - (4) A mediator case evaluator may not be called as a witness at trial.
- (E) Disqualification of Mediators Case Evaluators. The rule for disqualification of a mediator case evaluator is the same as that provided in MCR 2.003 for the disqualification of a judge.
- (F) Mediation ADR Clerk. The court shall designate the ADR clerk of the court, the court administrator, the assignment clerk specified under MCR 2.410, or some other person, to serve as administer the mediation clerk. case evaluation program. In this rule and MCR 2.404, "ADR clerk" refers to the person so designated.
- (G) Scheduling Mediation Case Evaluation Hearing.
 - (1) The mediation ADR clerk shall set a time and place

for the hearing and send notice to the ~~mediators~~
case evaluators and the attorneys at least 42 days
before the date set.

(2) [Unchanged.]

(H) Fees.

(1) Within 14 days after the mailing of the notice of the ~~mediation~~ case evaluation hearing, unless otherwise ordered by the court, each party must send to the ~~mediation~~ ADR clerk a check for \$75 made payable in the manner specified in the notice of the ~~mediation~~ case evaluation hearing. However, if a judge is a member of the panel, the fee is \$50. The ~~mediation~~ ADR clerk shall arrange payment to the ~~mediators~~ case evaluators. Except by stipulation and court order, the parties may not make any other payment of fees or expenses to the ~~mediators~~ case evaluators than that provided in this subrule.

(2) [Unchanged.]

(3) If one claim is derivative of another (e.g., husband-wife, parent-child) they must be treated as a single claim, with one fee to be paid and a single award made by the ~~mediators~~ case evaluators.

(4) In the case of multiple injuries to members of a single family, the plaintiffs may elect to treat the action as involving one claim, with the payment of one fee and the rendering of one lump sum award to be accepted or rejected. If no such election is made, a separate fee must be paid for each plaintiff, and the ~~mediation~~ case evaluation panel will then make separate awards for each claim, which may be individually accepted or rejected.

(5) Fees paid pursuant to subrule (H) shall be refunded to the parties if

(a) if the court sets aside the order submitting the case to ~~mediation~~ case evaluation or on its own initiative adjourns the ~~mediation~~ case evaluation hearing, or

(b) the parties notify the ~~mediation~~ ADR clerk in writing at least 14 days before the ~~mediation~~ case evaluation hearing of the settlement, dismissal, or entry of judgment disposing of the action, or of an order of adjournment on stipulation or the motion of a party.

In the case of an adjournment, the fees shall not be refunded if the adjournment order sets a new date for ~~mediation case evaluation~~. If ~~mediation case evaluation~~ is rescheduled at a later time, the fee provisions of subrule (H) apply regardless of whether previously paid fees have been refunded. Penalties for late filing of papers under subrule (I)(2) are not to be refunded.

(I) Submission of Documents.

- (1) At least 14 days before the hearing, each party shall file with the ~~mediation~~ ADR clerk 3 copies of documents pertaining to the issues to be mediated and 3 copies of a concise summary setting forth that party's factual and legal position on issues presented by the action, and shall serve one copy of the documents and summary on each attorney of record. A copy of a proof of service must be attached to the copies filed with the ~~mediation~~ ADR clerk.
- (2) Failure to file the required materials with the ~~mediation~~ ADR clerk or to serve copies on each attorney of record by the required date subjects the offending attorney or party to a \$150 penalty to be paid in the manner specified in the notice of the ~~mediation case evaluation~~ hearing. An offending attorney shall not charge the penalty to the client, unless the client agreed in writing to be responsible for the penalty.

(J) Conduct of Hearing.

- (1) A party has the right, but is not required, to attend a ~~mediation case evaluation~~ hearing. If scars, disfigurement, or other unusual conditions exist, they may be demonstrated to the panel by a personal appearance; however, no testimony will be taken or permitted of any party.
- (2) The rules of evidence do not apply before the ~~mediation case evaluation~~ panel. Factual information having a bearing on damages or liability must be supported by documentary evidence, if possible.
- (3) Oral presentation shall be limited to 15 minutes per side unless multiple parties or unusual circumstances warrant additional time. Information on applicable insurance policy limits and settlement negotiations shall be disclosed at the request of

the ~~mediation~~ case evaluation panel.

(4) [Unchanged.]

(5) Counsel or the parties may not engage in ex parte communications with the ~~mediators~~ case evaluators concerning the action prior to the hearing. After the evaluation, the ~~mediators~~ case evaluators need not respond to inquiries by the parties or counsel regarding the proceeding or the evaluation.

(K) [Unchanged.]

(L) Acceptance or Rejection of Evaluation.

(1) Each party shall file a written acceptance or rejection of the panel's evaluation with the ~~mediation~~ ADR clerk within 28 days after service of the panel's evaluation. Even if there are separate awards on multiple claims, the party must either accept or reject the evaluation in its entirety as to a particular opposing party. The failure to file a written acceptance or rejection within 28 days constitutes rejection.

(2) There may be no disclosure of a party's acceptance or rejection of the panel's evaluation until the expiration of the 28-day period, at which time the ~~mediation~~ ADR clerk shall send a notice indicating each party's acceptance or rejection of the panel's evaluation.

(3) In ~~mediations~~ case evaluations involving multiple parties the following rules apply:

(a) - (c) [Unchanged.]

(M) [Unchanged.]

(N) Proceedings After Rejection.

(1) If all or part of the evaluation of the ~~mediation~~ case evaluation panel is rejected, the action proceeds to trial in the normal fashion.

(2) If a party's claim or defense was found to be frivolous under subrule (K)(4), that party may request that the court review the panel's finding by filing a motion within 14 days after the ~~mediation~~ ADR clerk sends notice of the rejection of the ~~mediation~~ case evaluation award.

- (a) The motion shall be submitted to the court on the ~~mediation case evaluation~~ summaries and documents that were considered by the ~~mediation case evaluation~~ panel. No other exhibits or testimony may be submitted. However, oral argument on the motion shall be permitted.
 - (b) - (d) [Unchanged.]
 - (3) Except as provided in subrule (2), if a party's claim or defense was found to be frivolous under subrule (K)(4), that party shall post a cash or surety bond, pursuant to MCR 3.604, in the amount of \$5,000 for each party against whom the action or defense was determined to be frivolous.
 - (a) The bond must be posted within 56 days after the ~~mediation case evaluation~~ hearing or at least 14 days before trial, whichever is earlier.
 - (b) - (d) [Unchanged.]
 - (4) The ~~mediation~~ ADR clerk shall place a copy of the ~~mediation case~~ evaluation and the parties' acceptances and rejections in a sealed envelope for filing with the clerk of the court. In a nonjury action, the envelope may not be opened and the parties may not reveal the amount of the evaluation until the judge has rendered judgment.
- (0) Rejecting Party's Liability for Costs.
- (1) If a party has rejected an evaluation and the action proceeds to verdict, that party must pay the opposing party's actual costs unless the verdict is more favorable to the rejecting party than the ~~mediation case~~ evaluation. However, if the opposing party has also rejected the evaluation, a party is entitled to costs only if the verdict is more favorable to that party than the ~~mediation case~~ evaluation.
 - (2) For the purpose of this rule "verdict" includes,
 - (a) a jury verdict,
 - (b) a judgment by the court after a nonjury trial,
 - (c) a judgment entered as a result of a ruling on a motion after rejection of the ~~mediation case~~ evaluation.

- (3) For the purpose of subrule (O)(1), a verdict must be adjusted by adding to it assessable costs and interest on the amount of the verdict from the filing of the complaint to the date of the mediation case evaluation, and, if applicable, by making the adjustment of future damages as provided by MCL 600.6306; MSA 27A.6306. After this adjustment, the verdict is considered more favorable to a defendant if it is more than 10 percent below the evaluation, and is considered more favorable to the plaintiff if it is more than 10 percent above the evaluation. If the evaluation was zero, a verdict finding that a defendant is not liable to the plaintiff shall be deemed more favorable to the defendant.
- (4) In cases involving multiple parties, the following rules apply:
- (a) Except as provided in subrule (O)(4)(b), in determining whether the verdict is more favorable to a party than the mediation case evaluation, the court shall consider only the amount of the evaluation and verdict as to the particular pair of parties, rather than the aggregate evaluation or verdict as to all parties. However, costs may not be imposed on a plaintiff who obtains an aggregate verdict more favorable to the plaintiff than the aggregate evaluation.
- (b) If the verdict against more than one defendant is based on their joint and several liability, the plaintiff may not recover costs unless the verdict is more favorable to the plaintiff than the total mediation case evaluation as to those defendants, and a defendant may not recover costs unless the verdict is more favorable to that defendant than the mediation case evaluation as to that defendant.
- (c) [Unchanged.]
- (5) [Unchanged.]
- (6) For the purpose of this rule, actual costs are
- (a) those costs taxable in any civil action, and
- (b) a reasonable attorney fee based on a reasonable hourly or daily rate as determined by the trial judge for services necessitated by the rejection of the mediation case evaluation.

For the purpose of determining taxable costs under this subrule and under MCR 2.625, the party entitled to recover actual costs under this rule shall be considered the prevailing party.

- (7) Costs shall not be awarded if the ~~mediation case~~ evaluation award was not unanimous.
- (8) - (11) [Unchanged.]

Rule 2.404 Selection of ~~Mediation Case Evaluation~~ Panels

(A) ~~Mediator Case Evaluator~~ Selection Plans.

- (1) Requirement. Each trial court that submits cases to ~~mediation case evaluation~~ under MCR 2.403 shall adopt by local administrative order a plan to maintain a list of persons available to serve as ~~mediators case evaluators~~ and to assign ~~mediators case evaluators~~ from the list to panels. The plan must be in writing and available to the public in the ~~mediation~~ ADR clerk's office.
- (2) Alternative Plans.
 - (a) A plan adopted by a district or probate court may use the list of ~~mediators case evaluators~~ and appointment procedure of the circuit court for the circuit in which the court is located.
 - (b) Courts in adjoining circuits or districts may jointly adopt and administer a ~~mediation case~~ evaluation plan.
 - (c) If it is not feasible for a court to adopt its own plan because of the low volume of cases to be submitted or because of inadequate numbers of available ~~mediators case evaluators~~, the court may enter into an agreement with a neighboring court to refer cases for ~~mediation case~~ evaluation under the other court's system. The agreement may provide for payment by the referring court to cover the cost of administering ~~mediation case evaluation~~. However, fees and costs may not be assessed against the parties to actions ~~mediated~~ evaluated except as provided by MCR 2.403.
 - (d) Other alternative plans must be submitted as local court rules under MCR 8.112(A).

(B) Lists of ~~Mediators~~ Case Evaluators.

- (1) Application. An eligible person desiring to serve as a ~~mediator~~ case evaluator may apply to the ~~mediation~~ ADR clerk to be placed on the list of ~~mediators~~ case evaluators. Application forms shall be available in the office of the ~~mediation~~ ADR clerk. The form shall include an optional section identifying the applicant's gender and racial/ethnic background. The form shall include a certification that
 - (a) the ~~mediator~~ case evaluator meets the requirements for service under the court's selection plan, and
 - (b) the ~~mediator~~ case evaluator will not discriminate against parties, attorneys, or other ~~mediators~~ case evaluators on the basis of race, ethnic origin, gender, or other protected personal characteristic.
- (2) Eligibility. To be eligible to serve as a ~~mediator~~ case evaluator, a person must meet the qualifications provided by this subrule.
 - (a) The applicant must have been a practicing lawyer for at least 5 years and be a member in good standing of the State Bar of Michigan. The plan may not require membership in any other organization as a qualification for service as a ~~mediator~~ case evaluator.
 - (b) An applicant must reside, maintain an office, or have an active practice in the jurisdiction for which the list of ~~mediators~~ case evaluators is compiled.
 - (c) An applicant must demonstrate that a substantial portion of the applicant's practice for the last 5 years has been devoted to civil litigation matters, including investigation, discovery, motion practice, ~~mediation~~ case evaluation, settlement, trial preparation, and/or trial.
 - (d) If separate sublists are maintained for specific types of cases, the applicant must have had an active practice in the practice area for which the ~~mediator~~ case evaluator is listed for at least the last 3 years.

If there are insufficient numbers of potential

~~mediators~~ case evaluators meeting the qualifications stated in this rule, the plan may provide for consideration of alternative qualifications.

- (3) Review of Applications. The plan shall provide for a person or committee to review applications annually, or more frequently if appropriate, and compile one or more lists of qualified ~~mediators~~ case evaluators. Persons meeting the qualifications specified in this rule shall be placed on the list of approved ~~mediators~~ case evaluators. Selections shall be made without regard to race, ethnic origin, or gender.

(a) - (b) [Unchanged.]

- (c) Applicants who are not placed on the ~~mediator~~ case evaluator list or lists shall be notified of that decision. The plan shall provide a procedure by which such an applicant may seek reconsideration of the decision by some other person or committee. The plan need not provide for a hearing of any kind as part of the reconsideration process. Documents considered in the initial review process shall be retained for at least the period of time during which the applicant can seek reconsideration of the original decision.

- (4) Specialized Lists. If the number and qualifications of available ~~mediators~~ case evaluators makes it practicable to do so, the ~~mediation~~ ADR clerk shall maintain

(a) separate lists for various types of cases, and,

(b) where appropriate for the type of cases, separate sublists of ~~mediators~~ case evaluators who primarily represent plaintiffs, primarily represent defendants, and neutral ~~mediators~~ cases evaluators whose practices are not identifiable as representing primarily plaintiffs or defendants.

- (5) Reapplication. Persons shall be placed on the list of ~~mediators~~ case evaluators for a fixed period of time, not to exceed 5 years, and must reapply at the end of that time in the same manner as persons seeking to be added to the list.

- (6) Availability of Lists. The list of ~~mediators~~ case evaluators must be available to the public in the

~~mediation~~ ADR clerk's office.

- (7) Removal from List. The plan must include a procedure for removal from the list of ~~mediators~~ case evaluators who have demonstrated incompetency, bias, made themselves consistently unavailable to serve as a ~~mediator~~ case evaluator, or for other just cause.
- (8) The court may require ~~mediators~~ case evaluators to attend orientation or training sessions or provide written materials explaining the ~~mediation~~ case evaluation process and the operation of the court's ~~mediation~~ case evaluation program. However, ~~mediators~~ case evaluators may not be charged any fees or costs for such programs or materials.

(C) Assignments to Panels.

- (1) Method of Assignment. The ~~mediation~~ ADR clerk shall assign ~~mediators~~ case evaluators to panels in a random or rotating manner that assures as nearly as possible that each ~~mediator~~ case evaluator on a list or sublist is assigned approximately the same number of cases over a period of time. If a substitute ~~mediator~~ case evaluator must be assigned, the same or similar assignment procedure shall be used to select the substitute. The ~~mediation~~ ADR clerk shall maintain records of service of ~~mediators~~ case evaluators on panels and shall make those records available on request.
- (2) Assignment from Sublists. If sublists of plaintiff, defense, and neutral ~~mediators~~ case evaluators are maintained for a particular type of case, the panel shall include one ~~mediator~~ case evaluator who primarily represents plaintiffs, one ~~mediator~~ case evaluator who primarily represents defendants, and one neutral ~~mediator~~ case evaluator. If a judge is assigned to a panel as permitted by MCR 2.403(D)(3), the judge shall serve as the neutral ~~mediator~~ case evaluator if sublists are maintained for that class of cases.
- (3) Special Panels. On stipulation of the parties, the court may appoint a panel selected by the parties. In such a case, the qualification requirements of subrule (B)(2) do not apply, and the parties may agree to modification of the procedures for conduct of ~~mediation~~ case evaluation. Nothing in this rule or MCR 2.403 precludes parties from stipulating to other ADR procedures ~~similar to mediation~~ that may

aid in resolution of the case.

(D) Supervision of Selection Process.

- (1) The chief judge shall exercise general supervision over the implementation of this rule and shall review the operation of the court's mediation case evaluation plan at least annually to assure compliance with this rule. In the event of non-compliance, the court shall take such action as is needed. This action may include recruiting persons to serve as mediators case evaluators or changing the court's mediation case evaluation plan. The court shall submit an annual report to the State Court Administrator on the operation of the court's mediation case evaluation program on a form provided by the State Court Administrator.
- (2) In implementing the selection plan, the court, court employees, and attorneys involved in the procedure shall take all steps necessary to assure that as far as reasonably possible the list of mediators case evaluators fairly reflects the racial, ethnic, and gender diversity of the members of the state bar in the jurisdiction for which the list is compiled who are eligible to serve as mediators case evaluators.

Rule 2.405 Offers to Stipulate to Entry of Judgment

(A) - (D) [Unchanged.]

- (E) Relationship to Case Evaluation. Costs may not be awarded under this rule in a case that has been submitted to mediation case evaluation under MCR 2.403 unless the mediation case evaluation award was not unanimous.

Rule 2.410 Alternative Dispute Resolution

(A) Scope and Applicability of Rule; Definitions.

- (1) All civil cases are subject to alternative dispute resolution processes unless otherwise provided by statute or court rule.
- (2) For the purposes of this rule, alternative dispute resolution (ADR) means any process designed to resolve a legal dispute in the place of court adjudication, and includes settlement conferences

ordered under MCR 2.401; case evaluation under MCR 2.403; mediation under MCR 2.411; domestic relations mediation under MCR 3.216; and other procedures provided by local court rule or ordered on stipulation of the parties.

(B) ADR Plan.

- (1) Each trial court that submits cases to ADR processes under this rule shall adopt an ADR plan by local administrative order. The plan must be in writing and available to the public in the ADR clerk's office.
- (2) At a minimum, the ADR plan must:
 - (a) designate an ADR clerk, who may be the clerk of the court, the court administrator, the assignment clerk, or some other person;
 - (b) if the court refers cases to mediation under MCR 2.411, specify how the list of persons available to serve as mediators will be maintained and the system by which mediators will be assigned from the list under MCR 2.411(B)(3);
 - (c) include provisions for disseminating information about the operation of the court's ADR program to litigants and the public; and
 - (d) specify how access to ADR processes will be provided for indigent persons. If a party qualifies for waiver of filing fees under MCR 2.002 or the court determines on other grounds that the party is unable to pay the full cost of an ADR provider's services, and free or low-cost dispute resolution services are not available, the court shall not order that party to participate in an ADR process.
- (3) The plan may also provide for referral relationships with local dispute resolution centers, including those affiliated with the Community Dispute Resolution Program.
- (4) Courts in adjoining circuits or districts may jointly adopt and administer an ADR plan.

(C) Order for ADR.

- (1) At any time, after consultation with the parties, the court may order that a case be submitted to an

appropriate ADR process. More than one such order may be entered in a case.

- (2) Unless the specific rule under which the case is referred provides otherwise, in addition to other provisions the court considers appropriate, the order shall
 - (a) specify, or make provision for selection of, the ADR provider;
 - (b) provide time limits for initiation and completion of the ADR process; and
 - (c) make provision for the payment of the ADR provider.
- (3) The order may require attendance at ADR proceedings as provided in subrule (D).

(D) Attendance at ADR Proceedings.

- (1) Appearance of Counsel. The attorneys attending an ADR proceeding shall be thoroughly familiar with the case and have the authority necessary to fully participate in the proceeding. The court may direct that the attorneys who intend to try the case attend ADR proceedings.
- (2) Presence of Parties. The court may direct that persons with authority to settle a case, including the parties to the action, agents of parties, representatives of lien holders, or representatives of insurance carriers:
 - (a) be present at the ADR proceeding;
 - (b) be immediately available at the time of the proceeding.

The court's order may specify whether the availability is to be in person or by telephone.

- (3) Failure to Attend; Default; Dismissal.
 - (a) Failure of a party or the party's attorney to attend a scheduled ADR proceeding, as directed by the court, constitutes a default to which MCR 2.603 is applicable or grounds for dismissal under MCR 2.504(B).
 - (b) The court shall excuse the failure of a party or

the party's attorney to attend an ADR proceeding, and enter an order other than one of default or dismissal, if the court finds that

- (i) entry of an order of default or dismissal would cause manifest injustice; or
- (ii) the failure to attend was not due to the culpable negligence of the party or the attorney.

The court may condition the order on the payment by the offending party or attorney of reasonable expenses as provided in MCR 2.313(B)(2).

- (E) Objections to ADR. Within 14 days after entry of an order referring a case to an ADR process, a party may move to set aside or modify the order. A timely motion must be decided before the case is submitted to the ADR process.
- (F) Supervision of ADR Plan. The chief judge shall exercise general supervision over the implementation of this rule and shall review the operation of the court's ADR plan at least annually to assure compliance with this rule. In the event of noncompliance, the court shall take such action as is needed. This action may include recruiting persons to serve as ADR providers or changing the court's ADR plan.

Rule 2.411 Mediation.

- (A) Scope and Applicability of Rule; Definitions.
 - (1) This rule applies to cases that the court refers to mediation as provided in MCR 2.410. MCR 3.216 governs mediation of domestic relations cases.
 - (2) "Mediation" is a process in which a neutral third party facilitates communication between parties, assists in identifying issues, and helps explore solutions to promote a mutually acceptable settlement. A mediator has no authoritative decision-making power.
- (B) Selection of Mediator.
 - (1) The parties may stipulate to the selection of a mediator. A mediator selected by agreement of the parties need not meet the qualifications set forth

in subrule (F). The court must appoint a mediator stipulated to by the parties, provided the mediator is willing to serve within a period that would not interfere with the court's scheduling of the case for trial.

- (2) If the order referring the case to mediation does not specify a mediator, the order shall set the date by which the parties are to have conferred on the selection of a mediator. If the parties do not advise the ADR clerk of the mediator agreed upon by that date, the court shall appoint one as provided in subrule (B)(3).
- (3) The procedure for selecting a mediator from the approved list of mediators must be established by local ADR plan adopted under MCR 2.410(B). The ADR clerk shall assign mediators in a rotational manner that assures as nearly as possible that each mediator on list is assigned approximately the same number of cases over a period of time. If a substitute mediator must be assigned, the same or similar assignment procedure shall be used to select the substitute.
- (4) The rule for disqualification of a mediator is the same as that provided in MCR 2.003 for the disqualification of a judge. The mediator must promptly disclose any potential basis for disqualification.

(C) Scheduling and Conduct of Mediation.

- (1) Scheduling. The order referring the case for mediation shall specify the time within which the mediation is to be completed. The ADR clerk shall send a copy of the order to each party and the mediator selected. Upon receipt of the court's order, the mediator shall promptly confer with the parties to schedule mediation in accordance with the order. Factors that may be considered in arranging the process may include the need for limited discovery before mediation, the number of parties and issues, and the necessity for multiple sessions. The mediator may direct the parties to submit in advance, or bring to the mediation, documents or summaries providing information about the case.
- (2) Conduct of Mediation. The mediator shall meet with counsel and the parties, explain the mediation process, and then proceed with the process. The

mediator shall discuss with the parties and counsel, if any, the facts and issues involved. The mediation will continue until a settlement is reached, the mediator determines that a settlement is not likely to be reached, the end of the first mediation session, or until a time agreed to by the parties. Additional sessions may be held as long as it appears that the process may result in settlement of the case.

- (3) Completion of Mediation. Within 7 days after the completion of the ADR process, the mediator shall so advise the court, stating only the date of completion of the process, who participated in the mediation, whether settlement was reached, and whether further ADR proceedings are contemplated.
- (4) Settlement. If the case is settled through mediation, within 21 days the attorneys shall prepare and submit to the court the appropriate documents to conclude the case.
- (5) Confidentiality. Statements made during the mediation, including statements made in written submissions, may not be used in any other proceedings, including trial. Any communications between the parties or counsel and the mediator relating to a mediation are confidential and shall not be disclosed without the written consent of all parties. This prohibition does not apply to
 - (a) the report of the mediator under subrule (C)(3),
 - (b) information reasonably required by court personnel to administer and evaluate the mediation program,
 - (c) information necessary for the court to resolve disputes regarding the mediator's fee, or
 - (d) information necessary for the court to consider issues raised under MCR 2.410(D)(3).

(D) Fees.

- (1) A mediator is entitled to reasonable compensation based on an hourly rate commensurate with the mediator's experience and usual charges for services performed.
- (2) The costs of mediation shall be divided between the parties on a pro-rata basis unless otherwise agreed

by the parties or ordered by the court. The mediator's fee shall be paid no later than

- (a) 42 days after the mediation process is concluded, or
- (b) the entry of judgment, or
- (c) the dismissal of the action,

whichever occurs first.

- (3) If acceptable to the mediator, the court may order an arrangement for the payment of the mediator's fee other than that provided in subrule (D)(2).
- (4) The mediator's fee is deemed a cost of the action, and the court may make an appropriate order to enforce the payment of the fee.
- (5) If a party objects to the total fee of the mediator, the matter may be scheduled before the trial judge for determination of the reasonableness of the fee.

(E) List of Mediators.

- (1) Application. An eligible person desiring to serve as a mediator may apply to the ADR clerk to be placed on the court's list of mediators. Application forms shall be available in the office of the ADR clerk.

- (a) The form shall include a certification that
 - (i) the applicant meets the requirements for service under the court's selection plan;
 - (ii) the applicant will not discriminate against parties or attorneys on the basis of race, ethnic origin, gender, or other protected personal characteristic; and
 - (iii) the mediator will comply with the court's ADR plan, orders of the court regarding cases submitted to mediation, and the standards of conduct adopted by the State Court Administrator under subrule (G).
- (b) On the form the applicant shall indicate the applicant's hourly rate for providing mediation services.

- (c) The form shall include an optional section identifying the applicant's gender and racial/ethnic background.
 - (2) Review of Applications. The court's ADR plan shall provide for a person or committee to review applications annually, or more frequently if appropriate, and compile a list of qualified mediators.
 - (a) Persons meeting the qualifications specified in this rule shall be placed on the list of approved mediators. Approved mediators shall be placed on the list for a fixed period, not to exceed 5 years, and must reapply at the end of that time in the same manner as persons seeking to be added to the list.
 - (b) Selections shall be made without regard to race, ethnic origin, or gender. Residency or principal place of business may not be a qualification.
 - (c) The approved list and the applications of approved mediators, except for the optional section identifying the applicant's gender and racial/ethnic background, shall be available to the public in the office of the ADR clerk.
 - (3) Rejection; Reconsideration. Applicants who are not placed on the list shall be notified of that decision. Within 21 days of notification of the decision to reject an application, the applicant may seek reconsideration of the ADR clerk's decision by the Chief Judge. The court does not need to provide a hearing. Documents considered in the initial review process shall be retained for at least the period during which the applicant can seek reconsideration of the original decision.
 - (4) Removal from List. The ADR clerk may remove from the list mediators who have demonstrated incompetence, bias, made themselves consistently unavailable to serve as a mediator, or for other just cause. Within 21 days of notification of the decision to remove a mediator from the list, the mediator may seek reconsideration of the ADR clerk's decision by the Chief Judge. The court does not need to provide a hearing.
- (F) Qualification of Mediators.

- (1) Small Claims Mediation. District courts may develop individual plans to establish qualifications for persons serving as mediators in small claims cases.
- (2) General Civil Mediation. To be eligible to serve as a general civil mediator, a person must meet the following minimum qualifications:
 - (a) Complete a training program approved by the State Court Administrator providing the generally accepted components of mediation skills;
 - (b) Have one or more of the following:
 - (i) Juris doctor degree or graduate degree in conflict resolution; or
 - (ii) 40 hours of mediation experience over two years, including mediation, co-mediation, observation, and role-playing in the context of mediation.
 - (c) Observe two general civil mediation proceedings conducted by an approved mediator, and conduct one general civil mediation to conclusion under the supervision and observation of an approved mediator.
- (3) An applicant who has specialized experience or training, but does not meet the specific requirements of subrule (F)(2), may apply to the ADR clerk for special approval. The ADR clerk shall make the determination on the basis of criteria provided by the State Court Administrator. Service as a case evaluator under MCR 2.403 does not constitute a qualification for serving as a mediator under this section.
- (4) Approved mediators are required to obtain 8 hours of advanced mediation training during each 2-year period. Failure to submit documentation establishing compliance is ground for removal from the list under subrule(E)(4).
- (5) Additional qualifications may not be imposed upon mediators.
- (G) Standards of Conduct for Mediators. The State Court Administrator shall develop and approve standards of conduct for mediators designed to promote honesty, integrity, and impartiality in providing court-connected

dispute resolution services. These standards shall be made a part of all training and educational requirements for court-connected programs, shall be provided to all mediators involved in court-connected programs, and shall be available to the public.

Rule 2.501 Scheduling Trials; Court Calendars

(A) Scheduling Conferences or Trial.

(1) Unless the further processing of the action is already governed by a scheduling order under MCR 2.401(B)(2), the court shall

(a) [Unchanged.]

(b) schedule the action for ~~mediation~~ an alternative dispute resolution process,

(c) - (d) [Unchanged.]

(2) [Unchanged.]

(B) - (D) [Unchanged.]

Rule 2.502 Dismissal for Lack of Progress

(A) Notice of Proposed Dismissal.

(1) [Unchanged.]

(2) A notice of proposed dismissal may not be sent with regard to a case

(a) [Unchanged.]

(b) which is set for a conference, ~~mediation~~ an alternative dispute resolution process, hearing, or trial.

(3) [Unchanged.]

(B) - (C) [Unchanged.]

Rule 2.503 Adjournments

(A) Applicability. This rule applies to adjournments of trials, ~~mediations~~ alternative dispute resolution processes, pretrial conferences, and all motion hearings.

(B) - (F) [Unchanged.]

Rule 3.216 Domestic Relations Mediation

(A) Scope and Applicability of Rule, Definitions.

- (1) All domestic relations cases, as defined in MCL 552.502(h); MSA 25.176(2)(h), are subject to mediation under this rule, unless otherwise provided by statute or court rule.
- (2) Domestic relations mediation is a nonbinding process in which a neutral third party facilitates communication between parties to promote settlement. If the parties so request, and the mediator agrees to do so, the mediator may provide a written recommendation for settlement of any issues that remain unresolved at the conclusion of a mediation proceeding. This procedure, known as evaluative mediation, is governed by subrule (I).
- (3) This rule does not restrict the Friend of the Court from enforcing custody, parenting time, and support orders.
- (4) The court may order, on stipulation of the parties, the use of other settlement procedures.

(B) Mediation Plan. Each trial court that submits domestic relations cases to mediation under this rule shall include in its alternative dispute resolution plan adopted under MCR 2.410(B) provisions governing selection of domestic relations mediators, and for providing parties with information about mediation in the family division as soon as reasonably practical.

(C) Referral to Mediation.

- (1) On written stipulation of the parties, on written motion of a party, or on the court's initiative, the court may submit to mediation by written order any contested issue in a domestic relations case, including postjudgment matters.
- (2) The court may not submit contested issues to evaluative mediation unless all parties so request.

- (3) Parties who are subject to a personal protection order or who are involved in a child abuse and neglect proceeding may not be referred to mediation without a hearing to determine whether mediation is appropriate.

(D) Objections to Referral to Mediation.

- (1) To object to mediation, a party must file a written motion to remove the case from mediation and a notice of hearing of the motion, and serve a copy on the attorneys of record within 14 days after receiving notice of the order assigning the action to mediation. The motion must be set for hearing within 14 days after it is filed, unless the hearing is adjourned by agreement of counsel or unless the court orders otherwise.
- (2) A timely motion must be heard before the case is mediated.
- (3) Cases may be exempt from mediation on the basis of the following:
 - (a) child abuse or neglect;
 - (b) domestic abuse, unless attorneys for both parties will be present at the mediation session;
 - (c) inability of one or both parties to negotiate for themselves at the mediation, unless attorneys for both parties will be present at the mediation session;
 - (d) reason to believe that one or both parties' health or safety would be endangered by mediation; or
 - (e) for other good cause shown.

(E) Selection of Mediator.

- (1) Domestic relations mediation will be conducted by a mediator selected as provided in this subrule.
- (2) The parties may stipulate to the selection of a mediator. A mediator selected by agreement of the parties need not meet the qualifications set forth in subrule (G). The court must appoint a mediator stipulated to by the parties, provided the mediator is willing to serve within a period that would not

interfere with the court's scheduling of the case for trial.

- (3) If the parties have not stipulated to a mediator, the parties must indicate whether they prefer a mediator who is willing conduct evaluative mediation. Failure to indicate a preference will be treated as not requesting evaluative mediation.
- (4) If the parties have not stipulated to a mediator, the judge may recommend, but not appoint one. If the judge does not make a recommendation, or if the recommendation is not accepted by the parties, the ADR clerk will assign a mediator from the list of qualified mediators maintained under subrule (F). The assignment shall be made on a rotational basis, except that if the parties have requested evaluative mediation, only a mediator who is willing to provide an evaluation may be assigned.
- (5) The rule for disqualification of a mediator is the same as that provided in MCR 2.003 for the disqualification of a judge. The mediator must promptly disclose any potential basis for disqualification.

(F) List of Mediators.

- (1) Application. An eligible person desiring to serve as a domestic relations mediator may apply to the ADR clerk to be placed on the court's list of mediators. Application forms shall be available in the office of the ADR clerk.
 - (a) The form shall include a certification that
 - (i) the applicant meets the requirements for service under the court's selection plan;
 - (ii) the applicant will not discriminate against parties or attorneys on the basis of race, ethnic origin, gender, or other protected personal characteristic; and
 - (iii) the mediator will comply with the court's ADR plan, orders of the court regarding cases submitted to mediation, and the standards of conduct adopted by the State Court Administrator under subrule (K).
 - (b) The applicant shall indicate on the form whether the applicant is willing to offer

evaluative mediation, and the applicant's hourly rate for providing mediation services.

- (c) The form shall include an optional section identifying the applicant's gender and racial/ethnic background; however, this section shall not be made available to the public.
- (2) Review of Applications. The court's ADR plan shall provide for a person or committee to review applications annually, or more frequently if appropriate, and compile a list of qualified mediators.
- (a) Persons meeting the qualifications specified in this rule shall be placed on the list of approved mediators. Approved mediators shall be placed on the list for a fixed period, not to exceed 5 years, and must reapply at the end of that time in the same manner as persons seeking to be added to the list.
 - (b) Selections shall be made without regard to race, ethnic origin, or gender. Residency or principal place of business may not be a qualification.
 - (c) The approved list and the applications of approved mediators, except for the optional section identifying the applicant's gender and racial/ethnic background, shall be available to the public in the office of the ADR clerk.
- (3) Rejection; Reconsideration. Applicants who are not placed on the list shall be notified of that decision. Within 21 days of notification of the decision to reject an application, the applicant may seek reconsideration of the ADR clerk's decision by the presiding judge of the family division. The court does not need to provide a hearing. Documents considered in the initial review process shall be retained for at least the period during which the applicant can seek reconsideration of the original decision.
- (4) Removal from List. The ADR clerk may remove from the list mediators who have demonstrated incompetence, bias, made themselves consistently unavailable to serve as a mediator, or for other just cause. Within 21 days of notification of the decision to remove a mediator from the list, the mediator may seek reconsideration of the ADR clerk's

decision by the presiding judge of the family division. The court does not need to provide a hearing.

(G) Qualification of Mediators.

(1) To be eligible to serve as a domestic relations mediator under this rule, a applicant must meet the following minimum qualifications:

(a) The applicant must

(i) be a licensed attorney, a licensed or limited licensed psychologist, a licensed professional counselor, or a licensed marriage and family therapist;

(ii) have a masters degree in counseling, social work, or marriage and family therapy;

(iii) have a graduate degree in a behavioral science; or

(iv) have 5 years experience in family counseling.

(b) The applicant must have completed a training program approved by the State Court Administrator providing the generally accepted components of domestic relations mediation skills.

(c) The applicant must have observed two domestic relations mediation proceedings conducted by an approved mediator, and have conducted one domestic relations mediation to conclusion under the supervision and observation of an approved mediator.

(2) An applicant who has specialized experience or training, but does not meet the specific requirements of subrule (G)(1), may apply to the ADR clerk for special approval. The ADR clerk shall make the determination on the basis of criteria provided by the State Court Administrator.

(3) Approved mediators are required to obtain 8 hours of advanced mediation training during each 2-year period. Failure to submit documentation establishing compliance is grounds for removal from the list under subrule(F)(4).

- (4) Additional qualifications may not be imposed upon mediators.

(H) Mediation Procedure.

- (1) The mediator must schedule a mediation session within a reasonable time at a location accessible by the parties.
- (2) A mediator may require that no later than 3 business days before the mediation session, each party submit to the mediator, and serve on the opposing party, a mediation summary that provides the following information, where relevant:
 - (a) the facts and circumstances of the case;
 - (b) the issues in dispute;
 - (c) a description of the marital assets and their estimated value, where such information is appropriate and reasonably ascertainable;
 - (d) the income and expenses of the parties;
 - (e) a proposed settlement; and
 - (f) such documentary evidence as may be available to substantiate information contained in the summary.

Failure to submit these materials to the mediator within the designated time may subject the offending party to sanctions imposed by the court.

- (3) The parties must attend the mediation session in person unless excused by the mediator.
- (4) Except for legal counsel, the parties may not bring other persons to the mediation session, whether expert or lay witnesses, unless permission is first obtained from the mediator, after notice to opposing counsel. If the mediator believes it would be helpful to the settlement of the case, the mediator may request information or assistance from third persons at the time of the mediation session.
- (5) The mediator shall discuss with the parties and counsel, if any, the facts and issues involved. The mediation will continue until a settlement is reached, the mediator determines that a settlement is not likely to be reached, the end of the first

mediation session, or until a time agreed to by the parties.

- (6) Within 7 days of the completion of mediation, the mediator shall so advise the court, stating only the date of completion of the process, who participated in the mediation, whether settlement was reached, and whether further ADR proceedings are contemplated. If an evaluation will be made under subrule (I), the mediator may delay reporting to the court until completion of the evaluation process.
- (7) If a settlement is reached as a result of the mediation, to be binding, the terms of that settlement must be reduced to a signed writing by the parties or acknowledged by the parties on an audio or video recording. After a settlement has been reached, the parties shall take steps necessary to enter judgment as in the case of other settlements.
- (8) Statements made during the mediation, including statements made in written submissions, may not be used in any other proceedings, including trial. Any communications between the parties or counsel and the mediator relating to a mediation are confidential and shall not be disclosed without the written consent of all parties. This prohibition does not apply to
 - (a) the report of the mediator under subrule (H)(6),
 - (b) information reasonably required by court personnel to administer and evaluate the mediation program,
 - (c) information necessary for the court to resolve disputes regarding the mediator's fee, or
 - (d) information necessary for the court to consider issues raised under MCR 2.410(D)(3) or 3.216(H)(2).

(I) Evaluative Mediation.

- (1) This subrule applies if the parties requested evaluative mediation, or if they do so at the conclusion of mediation and the mediator is willing to provide an evaluation.
- (2) If a settlement is not reached during mediation, the mediator, within a reasonable period after the

conclusion of mediation shall prepare a written report to the parties setting forth the mediator's proposed recommendation for settlement purposes only. The mediator's recommendation shall be submitted to the parties of record only and may not be submitted or made available to the court.

- (3) If both parties accept the mediator's recommendation in full, the attorneys shall proceed to have a judgment entered in conformity with the recommendation.
- (4) If the mediator's recommendation is not accepted in full by both parties and the parties are unable to reach an agreement as to the remaining contested issues, mediator shall report to the court under subrule (H)(6), and the case shall proceed toward trial.
- (5) A court may not impose sanctions against either party for rejecting the mediator's recommendation. The court may not inquire and neither the parties nor the mediator may inform the court of the identity of the party or parties who rejected the mediator's recommendation.
- (6) The mediator's report and recommendation may not be read by the court and may not be admitted into evidence or relied upon by the court as evidence of any of the information contained in it without the consent of both parties. The court shall not request the parties' consent to read the mediator's recommendation.

(J) Fees.

- (1) A mediator is entitled to reasonable compensation based on an hourly rate commensurate with the mediator's experience and usual charges for services performed.
- (2) Before mediation, the parties shall agree in writing that each shall pay one-half of the mediator's fee no later than:
 - (a) 42 days after the mediation process is concluded or the service of the mediator's report and recommendation under subrule (I)(2), or
 - (b) the entry of judgment, or
 - (c) the dismissal of the action,

whichever occurs first. If the court finds that some other allocation of fees is appropriate, given the economic circumstances of the parties, the court may order that one of the parties pay more than one-half of the fee.

- (3) If acceptable to the mediator, the court may order an arrangement for the payment of the mediator's fee other than that provided in subrule (J)(2).
 - (4) The mediator's fee is deemed a cost of the action, and the court may make an appropriate judgment under MCL 552.13(1); MSA 25.93(1) to enforce the payment of the fee.
 - (5) In the event either party objects to the total fee of the mediator, the matter may be scheduled before the trial judge for determination of the reasonableness of the fee.
- (K) Standards of Conduct. The State Court Administrator shall develop and approve standards of conduct for domestic relations mediators designed to promote honesty, integrity, and impartiality in providing court-connected dispute resolution services. These standards shall be made a part of all training and educational requirements for court-connected programs, shall be provided to all mediators involved in court-connected programs, and shall be available to the public.

[Note: Former MCR 5.403 was redesignated as MCR 5.143 by the March 24, 2000, interim amendments of Chapter 5, governing probate court.]

Rule 5.143 ~~Mediation~~ Alternative Dispute Resolution

- (A) The court may submit to mediation, case evaluation, or other alternative dispute resolution process one or more requests for relief in any contested proceeding. MCR 2.410 applies to the extent feasible.
- (B) If a dispute is submitted to case evaluation, Procedures of MCR 2.403 and 2.404 shall apply to the extent feasible, except that sanctions must not be awarded unless the subject matter of the mediation case evaluation involves money damages or division of property.

Staff Comment: The May 8, 2000, amendments are based on the recommendations of the Michigan Supreme Court Dispute Resolution Task Force, which were published for comment on May 10, 1999 [see 459 Mich 1251], and were the subject of a series of public hearings across the state.

The Task Force report, issued in January 1999, and its Addendum report, issued in January 2000 after receipt of comments, should be consulted for the background and details of the amendments. Basically, the changes are as follows:

The amendments of MCR 2.403, 2.404, 2.405, 2.501, 2.502 and 2.503 are mainly to change terminology, replacing "mediation," as used in current MCR 2.403, with the term "case evaluation." "Mediation" will be used to describe the facilitative process established in MCR 2.411, in keeping with the generally accepted usage of the term.

MCR 2.401 is amended to direct consideration of alternative dispute resolution processes at scheduling and pretrial conferences.

New MCR 2.410 has general provisions governing referral of cases to alternative dispute resolution processes. Local courts wishing to use ADR techniques are to adopt ADR plans within the framework provided by the rule.

The one ADR process that is specifically established by the rules is mediation under new MCR 2.411. Among other things, the rule establishes general standards for mediator qualifications, and procedures for selection of mediators.

MCR 3.216, the domestic relations mediation rule, is substantially revised, to be more comparable to the mediation process in MCR 2.411.

MCR 5.143, regarding use of alternative dispute resolution processes in probate court, is amended to conform to the other rule changes.

The staff comment is published only for the benefit of the bench and bar and is not an authoritative construction by the Court.

Kelly, J. (*dissenting*).

I support the expanded use of alternative dispute resolution by our courts. However, I cannot cast a vote favoring the proposed Dispute Resolution Court Rules for two reasons: 1) they authorize judges to compel parties to submit

to mediation and 2) they include nonlawyers as mediators and other ADR providers.

Regarding the mandatory nature of the new rules, I believe that mediation is, by its very nature, a process that works only when the parties enter into it voluntarily. I would support rules that permit courts to order parties to a session at which the merits of ADR are explored, but not that mandate mediation.

It is my fear that mandatory mediation will present insurmountable financial obstacles to low income litigants and could even provoke challenges based on a violation of due process principles. I am concerned that, in some heavily burdened courts, judges may use the new rules, not as an option for the parties, but as a docket control mechanism for the court. Also, I find no limit in the rules to the number of times a party could be ordered to an ADR process.

Mediation should not become yet another hurdle to a just resolution of disputes. Parties should not feel pressed to settle against their best interests, or involuntarily to expend financial resources in excess of the normal costs of trial. Litigation, without the new rules, is already too costly.

I agree with the Board of Commissioners of the State Bar of Michigan that, absent agreement of the parties, only licensed lawyers should be allowed to serve as ADR providers. Mediation and other types of ADR typically involve complex legal matters requiring skilled ADR providers. Yet, no system has been developed to ensure the training and accountability of nonlawyers who participate.

Finally, I agree with the Open Justice Commission's recommendations that chief judges should be required to report the race, ethnicity, and gender of case evaluators and other ADR providers that they appoint. I view this as a vital step toward ensuring persons wishing to function as ADR providers will not be passed over solely on the basis of their race, gender, ethnic background, or similar factors.